# The Solicitors' Journal

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## Current Topics.

### Mr. Justice Astbury.

WE record with regret the death of The Right Honourable Sir JOHN ASTBURY, which took place on Monday, at Sandwich. Born in 1860, the late judge was educated at Trinity College, Oxford, securing a second class in the Honour School of Jurisprudence in 1882 and a first class at the B.C.L. examination in the following year. He was called to the Bar by the Middle Temple in 1884, took silk in 1895, and became a Bencher of his Inn in 1903. He acquired a large practice, and, as some of our readers will remember, came to occupy an outstanding position among those specialising in patent work. He represented Southport in the House of Commons from 1906 to 1910, though politics were little to his taste. Raised to the Bench in 1913, he was a puisne judge of the Chancery Division until 1929, and it is for his activities during those years that he will best be remembered by our readers. Among the cases which he decided probably none was more prominent than *National Sailors' and Firemen's Union of Great Britain and Ireland* v. *Reed* [1926] 1 Ch. 536, where he held that a general strike called by the Trades Union Congress Council where no trade dispute could be shown to exist was illegal. On resigning in 1929 he was sworn a member of the Privy Council.

### Housing: Repair of War Damage.

A CIRCULAR (No. 1810) which has recently been sent from the Ministry of Health to the local authorities concerned outlines the arrangements which have been made by the Government for dealing with repairs to house property damaged by air bombardment or other war action. It has been decided that the duty of and carrying out and supervising such work should rest with the housing authorities. It is stated that, as regards houses for the working classes, the duties which the Government will call upon the local authorities to undertake are substantially those already imposed by the Housing Act, 1936, but that, in the event of an emergency, the Government intend to seek legislation which would extend the duties to cover houses and other buildings which, although not working class houses, are being used or are required to be used for the accommodation of the general population. The proposed legislation would enable the housing authority to proceed with a minimum of formalities. It would empower the authorities to execute temporary repairs to damaged houses and other buildings; and, after statutory notice, repairs of a more permanent nature when circumstances justified them, if the person having control of the building was unable or unwilling to execute the repairs himself. In the case of temporary repairs, the matter would be of such urgency that it would be left to the local authority and its officers. In the case of more permanent repairs, the position would be different. There would be time to give the matter adequate consideration and for consultation with the Ministry's officers. For this reason it is contemplated that the Minister's consent would be required before the local authority could serve the requisite notice. The costs of any works carried out by a local authority under these provisions would be registered as a charge on the premises, but there would be no right of recovery until the end of the emergency. The necessary money for the repairs would be obtained by the local authorities by means of loans advanced by the Minister of Health on terms and conditions approved by the Treasury. There would, it is stated, normally be no repayments or interest charges in respect of these loans until the end of the emergency, and at that time the question of the treatment of any residual liability remaining on the local authorities, after taking into account the charges registered on property and the operation of the Government's compensation scheme, would be considered. Such, in brief, is the scheme which the Government contemplates would be put into operation in the event of an emergency. Advice and assistance in the execution of their task would, it is stated, be available to local authorities from regional offices of the Ministry. Readers desiring further particulars must be referred to the circular itself, which is published by H.M. Stationery Office, price 1d. net.

## The Bastardy (Blood Tests) Bill.

THE Select Committee of the House of Lords which considered the Bastardy (Blood Tests) Bill has now issued its report in which the unanimous opinion is recorded that the qualities of blood underlying blood grouping, and the laws of inheritance governing the transmission of those qualities from parents to children, are accepted by such a consensus of scientific opinion throughout the civilised world as to render it desirable in the interests of justice for this knowledge to be applied to affiliation cases. The committee is satisfied that the risk of error in the making of blood tests has been reduced to negligible proportions and that the tests not only might but would prevent injustice. The argument that to make it mandatory on the court to order a blood test in civil cases would be an interference with the liberty of the subject and that a mother might shrink from so simple a proceeding is met with the observation that, in view of the social repercussions and possible injury to reputation involved, these cases require special treatment. It is recommended that in cases where a blood test is demanded by the defendant the ordering of blood tests should be mandatory on the court, and that in all other cases, the power to order the tests should be discretionary. IN all cases where the applicant refuses to undergo a test her application should be refused. It is further considered that blood tests, within their own domain, should be sufficient evidence of the facts shown thereby, unless the "approved person," as defined in the proposed Act, should have attended the court, or, in the case of appeal, quarter sessions, at the instance of the court or of either party, in which case he would be liable to cross-examination in the same way as any other witness; that the court should have discretion to demand security for costs and to order the payment of costs by either party, not only of the test, but also of the attendance in court of the approved person aforesaid; and that the court should have discretion to impose such costs upon the local funds. The committee has decided that an "approved person" nominated by the court to take the tests ought to be a registered medical practitioner, who is also a pathologist; but is of opinion that provision should be made for blood samples to be taken by a registered medical practitioner—who, where practicable, should be nominated by the court—but not necessarily by an "approved person" and that, in view of possible nervousness on the part of the woman applicant, the medical practitioner should, if possible, be the applicant's regular medical attendant. The committee recommends that the Bill, with the amendments which it has introduced, should now be passed into law.

## Ribbon Development: Amending Legislation.

A FEW weeks ago we made reference to a statement by the Minister of Transport concerning the proposed amendment of the Restriction of Ribbon Development Act, 1935. *The Times* Parliamentary Correspondent recently intimated that preparations are being made for the introduction of such a measure, and that a Bill is to be brought forward by the Minister of Transport as soon as Parliamentary time permits. The experimental nature of the present Act, was, it is stated, generally recognised when it was passed, and experience has shown that some of the existing provisions could with advantage be modified. The highway authorities have represented that the objects of the Act are not being achieved as fully as was expected, largely owing to its financial provisions, under which the Minister is empowered to make grants towards compensation only in cases arising from standard width restrictions. Thus, the Minister has no power to make grants towards expenditure incurred by highway authorities as a result of the coming into force of restrictions under s. 2 of the Act which prohibits, without the consent of such authority, the construction of means of access to the road or the erection of buildings within 220 feet from the middle. This section, it will be remembered, applies to all classified roads and such others as are brought within it by resolution of the highway authority approved by the Minister. The success of the Act is largely dependent upon the exercise of a discretion by an authority which cannot look for assistance from the central authority in meeting the consequent expenditure, and it is therefore not surprising to learn that the main object of the amending legislation is understood to be the enabling of the Minister to make grants towards compensation payable as a result of the restriction of access to all roads to which the present Act applies. It appears that simplification of the existing machinery and procedure is also under consideration.

## A.R.P. in Industry.

THE Civil Defence Act, 1939, contains a number of provisions of importance to practitioners, as is, indeed, clear from the comprehensive series of articles appearing on the subject in this Journal. Certain of these provisions relate to industrial and commercial concerns, and the attention of readers, in this connection, may be drawn to the publication issued from the Lord Privy Seal's Office, entitled "A.R.P. in Industry." This is described on the title page as "A revised and amplified description of the Civil Defence Act, as it affects owners and occupiers of Industrial and Commercial Establishments," and it appears that some solicitors who have come into possession of the pamphlet have found it valuable in their practice for dealing with matters arising out of these portions of the Act. The pamphlet, which is obtainable free of charge from the Publicity Section, A.R.P. Department, Horseferry House, Thorney Street, S.W.1, provides within a short compass an admirable summary of the relevant provisions of the Act and readers may well find it useful to consult it, at least as a preliminary to such further investigation as the particular problem before them may demand. Mention may also be made of A.R.P. Circular No. 158/1939 (H.M. Stationery Office, price 4d. net) which the Lord Privy Seal has caused to be sent to local authorities with the object of calling attention to some of the provisions of the Act and furnishing guidance for its administration. Much of the information contained in this circular should prove of equal value to solicitors.

## Rules and Orders: Public Analysts.

SECTION 66 (2) of the Foods and Drugs Act, 1938, provides, *inter alia*, that no person shall be appointed a public analyst unless he possesses either the prescribed qualifications or such other qualifications as the Minister of Health may approve. Section 69 (3) of the same Act contains a provision to the effect that the public analyst shall as soon as practicable analyse any sample sent to him in pursuance of the section, and give to the person by whom it was submitted a certificate in the prescribed form specifying the result of the analysis. In exercise of the powers conferred by these sections, and of all other powers enabling him in that behalf, the Minister of Health has recently made the Public Analysts Regulations which prescribe the form of certificate to be used by public analysts for the purpose of s. 69, and provide that a person shall not after the coming into force of the regulations be qualified to be appointed as a public analyst under the Act, unless either (*a*) he already holds an appointment as public analyst, or (*b*) he is holder of the Diploma of Fellowship or Associateship of the Institute of Chemistry of Great Britain and Ireland, and is also the holder of a certificate granted by that Institute after an examination conducted by them in the chemistry (including microscopy) of food, drugs and water. These qualifications do not differ from those at present required, but the form of certificate has been slightly amended. The new regulations (S.R. & O., 1939, No. 840), which are published by H.M. Stationery Office, price 1d. net, come into operation on 1st October, or on the same day as the Act itself.

# The Civil Defence Act.

## II.

### B.—*Factories, mines and commercial buildings.*

I. Every person who employs more than thirty persons in any factory premises, in or about any mine, or in any commercial building is subject to s. 23. Section 89 defines the terms "mine," "commercial building" and "factory," and lays down the manner in which the thirty employees are to be calculated. These provisions are too detailed and elaborate for profitable discussion here.

Every person subject to s. 23 had to report in writing to the factory inspector, mines inspector, or to the local authority if his premises were a commercial building, what he was doing about training his employees in air-raid routine, and seeing that a suitable proportion are given training and equipment for first-aid, fire-fighting and dealing with the effects of gas.

This report had to be made by 13th August, 1939, if the person was within s. 23 when the Act was passed, or within a month of his coming within s. 23. The penalty on conviction for failing to report is a fine not exceeding £100, and, if default continues after conviction, a further fine not exceeding £50 for every day it continues.

The factory inspector, mines inspector or local authority may serve notice on a person within s. 23 requiring him to take measures for the same purposes as those the subject of a report, and there are like penalties for failure to comply. But the recipient of a notice may appeal against it to the Minister within fourteen days of its receipt.

II. Every occupier of factory premises, owner of a mine or public utility undertaker must "forthwith" take all necessary measures to secure that in war-time during the hours of darkness no light shows from within his premises, and no lights outside a building remain on: s. 43 (1). There are exceptions for lights "exhibited solely in the interests of navigation," and for lights outside a building which are (i) essential for work of national importance; (ii) adequately shaded; (iii) reduced in power; (iv) capable of instant extinction, unless the Minister excuses this requirement. The relevant inspector, or, in the case of public utility undertakings, the appropriate department, may order the taking of these measures, s. 43 (2), and there are penalties for non-compliance: s. 47. If any such business involves the emission of flames or glare not capable of being screened by measures which would suffice for ordinary lighting, the Minister or appropriate department may order the person concerned to take steps to secure that in war-time "the flames or glare will either no longer be produced during any period of darkness, or will be wholly or partially screened": s. 44 (1). The same provision is made regarding owners of mines in connection with which there is a deposit of refuse which is burning or liable to spontaneous combustion: s. 44 (2). The Treasury may make grants not exceeding 50 per cent. in aid of the cost of carrying out the requirements of s. 44: s. 46.

III. The Minister may serve on any factory premises occupier, mine-owner or public utility undertaker a notice requiring him to camouflage his premises: s. 45. Sections 46 and 47 apply regarding grants and penalties.

IV. Elaborate provision is made in ss. 12 to 22 for compelling the occupiers of factory premises, owners of mines or owners of commercial buildings to provide private air-raid shelters for their employees. But those sections only apply to "areas specified in that behalf in an order made by the Minister": s. 12. No such order has yet been issued, but a provisional list of specified areas has been published ("Provisional List of Areas to which Part III of the Bill is proposed to be applied").

The Minister is to issue a "code" for the guidance of persons concerned in providing air-raid shelters: s. 13. No such code has yet been issued, but a provisional one was issued some weeks ago ("Air Raid Shelters for Persons working in Factories and Commercial Buildings").

The occupier of any factory premises, the owner of any mine and the owner of any commercial building is under a duty to report what he is doing about providing air-raid shelter for his employees, etc.: s. 14 (1). This report has to be made within three months of the "appropriate date," viz., the date of first issue of the code, the making of an order applying ss. 12 to 22 to his area, or his premises becoming factory premises, mine or commercial building within s. 89: s. 14 (3). He has also to report when the works are completed. The penalty for failure is a fine not exceeding £100 and a default fine not exceeding £10 per diem.

The person liable to make the report is empowered by s. 15 to execute any works necessary to provide air-raid shelter up to the standard prescribed by the code, notwithstanding any restrictive covenant, or limitation of his interest, or in case of the owner of a commercial building that he is not in possession: s. 15 (5).

Before starting such works the occupier of factory premises who is not the owner of the whole is to serve notice of his intention on his immediate landlord or landlords. In case of a commercial building the person to do the works is the owner who does not occupy the whole: by s. 90 (1) "owner" means the person in whom there is vested a lease of the premises having over ten years unexpired, or if there are two or more such leases the lessee on whose interest all other leases are reversionary; if there is no such lessee, then the estate owner in fee simple is the "owner." In each case there is a modification to meet the situation of a mortgagee in possession or where a receiver is receiving rents and profits for him. Accordingly, it is provided that notices under s. 15 have to be served by the owner of a commercial building on every lessee whose estate is immediately derived out of the owner's interest and on the occupier, and on the owner's immediate landlord. An immediate landlord receiving a notice from the occupier of factory premises or the owner of a commercial building has to pass it on to his immediate landlord, and so on.

By s. 16 the factory inspector, mines inspector or local authority may serve a notice on the occupier of factory premises, owner of a mine or owner of a commercial building, as the case may be, requiring him to provide shelter in accordance with the code for his employees, etc. There are penalties for failure to comply, and the recipient of such a notice has to give copy notices to others interested in the premises similar to those which have to be given under s. 15.

Section 17 confers a right of appeal to the Minister by recipients of notices or copies under s. 15 or s. 16. The appeal must be made within twenty-one days of the service of a notice by an inspector or the local authority, or fourteen days of its service by the occupier of factory premises or the owner of a commercial building where no notice has been served by the inspector or authority.

Sections 18 and 19 lay down a series of rules for how the expenditure under ss. 14 to 17 is to be borne. These sections are too elaborate for exposition here, and the persons concerned and their legal advisers should study their text. Section 20 provides for contributions in respect of works commenced before the passing of the Act. Section 21 provides that nothing in Pt. III is to be in derogation of any existing rights.

By s. 22 a grant-in-aid of 5s. 6d. in the £ is to be payable if air-raid shelters in conformity with the code are completed before 30th September, 1939, or if the works are then in progress, and the Minister is satisfied that they will be completed within a reasonable time. The grant is payable to anyone who provides such shelter under ss. 12 to 20, and to "every other person who incurs expenses of a capital nature in providing or securing the provision of air-raid shelter of the approved standard for all or any of the persons employed

by him," save in a building wholly or mainly occupied as a school, college, university, hotel, restaurant, club, place of public entertainment, hospital or nursing home. The reason for the exceptions is not, however, obvious.

V. By s. 10 it is provided that a local authority may make an agreement with the occupier of factory premises or the owner of a commercial building for the provision of a public air-raid shelter to accommodate the persons living or working in the factory premises or commercial building, if the shelter cannot reasonably be provided on the premises. The local authority may, of course, make terms as to payments for the shelter by the person affected.

## Criminal Law and Practice.

### PLYING FOR HIRE.

A MUCH used section of the Town Police Clauses Act, 1847 (s. 45), forbids, subject to a maximum penalty of £10, a person who owns or is concerned in letting a carriage to permit it to be used as a hackney carriage plying for hire within the urban district without having obtained a licence, or during the time it is suspended. It also, *inter alia*, makes a person liable if he be found driving, standing or plying for hire within the urban district without licence or without having the number corresponding with the number of the licence openly displayed on such carriage. Analogous provisions concerning "plying for hire" are contained in the Metropolitan Public Carriage Act, 1869, s. 7.

In a prosecution under the 1847 Act, at Liverpool, on 11th July, 1939 (*Benson* v. *Luxury Taxis (Liverpool), Ltd.*), the facts were that of four ladies who were waiting for a tramcar at a stop near a well-known hotel three boarded a tramcar and the fourth waited. One of the defendant company's cars drove up and left a fare at the hotel, whereupon the fourth lady engaged the car and boarded it. The driver, before driving her away, went to his garage and was instructed to accept the fare. Drivers employed by the defendant company were instructed by printed orders and verbal instructions not to pick up fares in the street, and the driver in this case obtained a written order from the garage before commencing the journey. The magistrates held that the prosecution had proved its case, but dismissed the summons on payment of three guineas costs.

There can be little doubt in this case that the carriage was "exhibited" within the meaning of the word in the judgment of Channell, J., in *Cavill* v. *Amos*, 64 J.P. 309, where he said: "In ordinary cases, in order that there should be a plying for hire the carriage itself should be exhibited. It is, however, possible that a man might ply for hire with a carriage without exhibiting it, by going round touting for customers." In that case a divisional court held that the defendant neither exhibited his vehicle nor touted for custom for it, but, in fact, was touting for custom for a licensed vehicle, which he was permitted to do. If, in fact, the driver had been touting for an unlicensed vehicle he would have been convicted, and that case would have governed the Liverpool case, except that in the latter case the fare, presumably, was not legally accepted until instructions had been obtained from the garage.

A case which presented striking similarities to the Liverpool case was *Foinett* v. *Clark and Another*, 41 J.P. 359, where the appellant, a jobmaster, rented from a railway company a portion of an office at their station and also paid 9s. weekly for the use of a strip of ground in the station opposite, where hackney carriages were allowed to wait for passengers. The defendant kept on his strip of land a superior type of carriage to the usual hackney carriage, and the drivers of his vehicles had strict orders not to solicit custom but to refer persons wishing to hire vehicles to the office, where they were to obtain an order or ticket, partly printed and partly filled in in writing, with the date, the name of the hirer, etc. The hirer was allowed to occupy the carriage on delivery of the order to the driver. Cleasby, B., and Pollock, B., held that the case was free from doubt and was clearly covered by the authorities, and that the defendants were properly convicted.

This was one of a series of decisions dealing with the case of vehicles waiting for passengers from trains. Two of these were cited in *Foinett* v. *Clark*, one of them being *Clarke* v. *Stanford*, C.R. 6 Q.B. 357, in which Cockburn, C.J., put the matter clearly, as follows: "It is not expressly found in the case, but I assume that they had undertaken to convey only such persons as came by train. I think that that does amount to plying for hire, and that it is not the same thing as if a person whose carriage is hired to convey a particular person sends it to the station to wait for the passenger. Here the carriage is waiting in a place frequented by the public, and, although no word or gesture is used, the driver, nevertheless, indirectly invites the persons who arrive by the train and who, although the station be private property, have a right to pass over it." This was followed in *Allen* v. *Tunbridge*, L.R. 6 C.P. 481, in which M. Smith, J., said that it was a decision "that if a person exposes his carriage in a place where everybody passing may hire it if he will, that is plying for hire." In the recent case at Liverpool the vehicle was certainly "exposed" or "exhibited," although perhaps not with the conscious and deliberate aim of attracting custom. The driver, however, was not averse to using the occasion for taking the fare which he had in fact attracted and for that reason the magistrates must have held that his previous strict instructions not to take fares from the street, and the fact that he directed the would-be client to a place where she could buy a ticket, were irrelevant considerations under the circumstances, or at any rate mere formalities designed to lend a colourable legality to an otherwise prohibited transaction.

In certain circumstances it is permissible to sell tickets to passengers before the journey commences. In *Sales* v. *Lake* [1922] 1 K.B. 553, the respondents were charged under para. 17 (2) of the Order (Statutory Rules and Orders, 1917–No. 426), which applies the provisions of s. 7 of the Metropolitan Public Carriage Act, 1869. They had advertised char-a-banc excursions to Brighton, and passengers had bought tickets at the respondents' offices before the time of departure. The driver then commenced to pick up passengers at pre-arranged places on the public streets. No one else was picked up, and the driver in fact had no authority to pick up other passengers. In this case it was argued that *Foinett* v. *Clark* governed the facts, and that the respondents were therefore guilty of plying for hire although the tickets had been obtained beforehand. Lord Trevethin, C.J., was influenced in his judgment by the fact that the respondents reserved the right to cancel the journey when less than fifteen persons had booked seats prior to the advertised starting time. This, he said, was strong evidence that at the time they began to solicit passengers they had not even made up their minds that they would ever procure this carriage, and in any event they certainly had no carriage in their possession until after the stage of soliciting or waiting for passengers was over. The two essential conditions to be satisfied if a plying for hire was to be proved, said the learned judge, were: (1) there must be a soliciting or waiting to secure passengers by the driver or other person in control without any previous contract with them; and (2) the owner or person in control who is engaged in or authorises the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers.

Many of the decisions on the subject of the purchase of tickets can be summed up in the excellent phrase of Lord Hewart, C.J., in *Armstrong* v. *Ogle* [1926] 2 K.B. 438, at p. 445: "In this case also I think that the plan adopted by the

appellant was a good plan for evading the statute, but it was not good enough." The case at Liverpool might certainly be described as a border-line case, but it was on the wrong side of a border which was very clearly defined and settled in *Sales* v. *Lake* by Lord Trevethin.

## Company Law and Practice.

UNDER s. 168 of the Companies Act, 1929, a company may be wound up by the court if—

**"Just and Equitable": A Recent Decision.**

(1) the company has by special resolution resolved that the company be wound up by the court;

(2) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(3) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

(4) the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below seven;

(5) the company is unable to pay its debts;

(6) the court is of opinion that it is just and equitable that the company should be wound up.

It is now well established that the words "Just and equitable" in s. 168 (6) are not to be read as being merely *ejusdem generis* with the preceding words of the enactment, and winding-up orders have been made on this ground where, *inter alia*, a company is carrying on business at a loss and its remaining assets are insufficient to pay its debts; where it is impossible to carry on the business of a company owing to internal disputes which have produced a deadlock; where in the case of a private company one director treats the business of the company as his own and does not carry on the business as that of the company; and where the misconduct of directors or promoters can only be successfully investigated in a winding-up by the court.

The application of s. 168 (6) was recently considered by Bennett, J., in *Re Anglo-Continental Produce Co., Ltd.* (1939), 83 SOL. J. 95; 1 All E.R. 99, where a company presented a petition for its compulsory winding-up on the ground that it was just and equitable that it should be wound up. The petition was presented as the outcome of a resolution to wind up carried by a majority, which was not a three-fourths majority, of the shareholders.

The company was a private company formed in 1898, and by its articles of association it was provided that there should be two governing directors, H and R. By art. 67 it was provided that H and R should be the governing directors of the company until they should vacate office as otherwise provided, and while they retained office they should have authority to exercise all t hepowers, authorities and discretions vested by the articles in directors, and should have the control of all other directors for the time being. Article 68 further provided, *inter alia*, that H and R, while holding the office of governing directors, might from time to time appoint any other person or persons to be a director of the company, with power to define the powers of such directors, to fix their remuneration, and with power to remove any director howsoever appointed. Article 69 provided that if H should resign his office as provided in the articles, or should die while holding the office of governing director, he or the trustees for the time being of his will, as the case might be, should have the right to appoint a governing director of the company in his place and the person so appointed should exercise the powers vested in governing directors by arts. 67 and 68.

After a very prosperous history, the profits of the company fell away, and since 1928 it had paid no dividend on its ordinary shares, and the dividend on its preference shares was in arrear since November, 1934. The company was not, however, insolvent.

In 1931, H retired from his office of governing director, and had not exercised the power of appointing a governing director in his place as he could have done under art. 69. The board of directors, at the date of the petition, consisted of R, B, a solicitor, and P, his managing clerk, and R claimed that, the board being constituted as it was, he, as a governing director, had, under art. 67, the powers which that article gave to a governing director.

"When," as his lordship expressed it, "one gets down to the real facts of the case" the reasons for petitioning for winding-up, on the grounds that it was just and equitable to wind up the company, were two: (*a*) that the majority of the shareholders desired to have repaid to them the money which they had tied up in the company. Their money was not, at the time, earning for them any interest or any dividend, and it was said that their reason for wanting it back was not capricious; (*b*) that there was a state of deadlock and friction which made it impossible for the business of the company to be carried on.

The allegation of deadlock and friction was not maintainable, for no friction had been proved, and his lordship expressed the view that R the governing director, had, upon the true construction of the articles, the power, should he choose to exercise it, to overrule the views of those who were at the moment associated with him in the direction of the company. It was true that H still had the power of appointing somebody to act as governing director with R, and that if that power were exercised there might then be friction between the appointee and R, but that was a future question which could not form a valid basis for the present petition.

Bennett, J., likewise held that the mere wish of the majority of the shareholders, not being a three-fourths majority, to be repaid the money which had been advanced by them to the company, is no ground whatever for making a winding-up order on the footing that it is just and equitable so to do. On this point, his lordship quoted with approval the *dicta* of James, L.J., in *Re Langham Skating Rink Co.* (1877), 5 Ch. D. 669, where, at pp. 655, 686, the learned lord justice refers to the reluctance of the court, unless a very strong case is made, to take upon itself to interfere with the domestic forum which has been established for the management of the affairs of a company. "The Legislature has not authorised a mere majority to say that they will capriciously discontinue the undertaking which has been begun, it was not thought right that people when advancing money in undertakings of this kind should be left at the mercy of a mere majority of their brother shareholders, and those who wish to wind up must get a majority of three-fourths."

If then it is sought to wind up a company on the ground that it is just and equitable to do so, there must be something more than a mere desire by a majority to get back their money. An indication of what is required is found in the words of Lord Clyde, Lord President, in *Baird* v. *Lees* (1924), S.C. 83, a case cited in *Loch* v. *John Blackwood* [1924] A.C. 783. In the judgment of the Privy Council, delivered by Lord Shaw of Dunfermline in the latter case, this is the passage which, at pp. 793, 794, is cited from the judgment of Lord Clyde, Lord President, in *Baird* v. *Lees*, at p. 92: "I have no intention of attempting a definition of the circumstances which amount to a 'just and equitable' cause. But I think I may say this. A shareholder puts his money into a company on certain conditions. The first of them is that the business in which he invests shall be limited to certain definite objects. The second is that it shall be carried on by certain persons elected in a specified way. And the third is that the business shall be conducted in accordance with certain principles of commercial administration defined in the statute, which provide some guarantee of commercial probity

and efficiency. If shareholders find that these conditions or some of them are deliberately and consistently violated and set aside by the action of a member and official of the company who wields an overwhelming voting power, and if the result of that is that, for the extrication of their rights as shareholders, they are deprived of the ordinary facilities which compliance with the Companies Acts would provide them with, then there does arise, in my opinion, a situation in which it may be just and equitable for the court to wind up the company."

Bennett, J., added that he was unaware of any case in which a court has made a winding-up order on the ground that it is just and equitable to make it unless it has been proved, either that some wrong has been done to the company and the company is deprived of its remedies because the voting power has been so used as to prevent the company from having its remedy in respect of it, or that it is a case in which the substratum of the company has gone, or that the case has been one in which it has been impossible, owing to the way in which the voting power is held and to the feelings of the directors towards one another, for the business of the company to be carried on. The present case had not been brought within any one of the decided cases and accordingly the petition was dismissed.

## A Conveyancer's Diary.

**Covenants of Indemnity.**

It has long been the rule that the assignee of a lease is bound to covenant with his assignor to "observe and perform" the covenants in the lease. Such a covenant is, however, only one of indemnity (*Harris* v. *Boots Cash Chemists (Southern), Ltd.* [1904] 2 Ch. 376). Of course, as was there explained, if the assignor had chosen to insist that the assignment should contain covenants in express terms the same as those contained in the original lease, and the assignor had chosen to comply, it would have been a different matter, and those covenants would have been capable of direct enforcement (if negative, by injunction), and the court could not have inquired into the motives from which they were entered into. But in the ordinary case the covenant to observe and perform can only be enforced by the assignor if an action is brought against him by the original lessor. As was explained by Warrington, J., in the case cited, such an action could not be one for an injunction, because the assignor is himself committing no breach and is not in possession.

The same rule applies to freeholds which are sold under a contract disclosing that they are subject to restrictive covenants. In *Re Poole & Clarke's Contract* [1904] 2 Ch. 173, the Court of Appeal forced a purchaser in such a case to covenant in the following terms: "With the object and intention of affording to the vendor, his heirs, executors and administrators, a full and sufficient indemnity in respect of the [restrictive covenants], but not further or otherwise, [the purchaser covenants to observe and perform the same]." The court indicated that the words referring to the intention were probably only to be inserted *ex abundanti cautela* and foreshadowed the decision of Warrington, J., regarding leaseholds in *Harris* v. *Boots Cash Chemists (Southern), Ltd., supra.*

The rule was taken a stage further in *Reckitt* v. *Cody* [1920] 2 Ch. 452, where a grantee of freeholds subject to restrictive covenants in the hands of his vendor had covenanted "for herself her heirs and assignees (with intent to bind the hereditaments hereby conveyed and all persons in whom the same shall for the time being be vested, but not so as to be personally liable after she has parted with the same) with the vendor, his heirs and assigns, that she, her heirs and assigns will observe and perform" the restrictive covenants. Even this covenant, with its reference to successors in title on both sides, was held by Eve, J., to be only one of indemnity, and not to be enforceable by the vendor in a case where the original covenantee was not proceeding against him.

Accordingly, the rules may be summarised thus:—

(1) On an assignment of leaseholds the assignee must covenant with the assignor to observe and perform the covenants in the lease; this covenant is now implied by law: L.P.A., 1925, s. 77 (1) (C), and Second Schedule, Pt. IX. Even if express, it is only a covenant of indemnity: see per Vaughan Williams, L.J., in *Re Poole & Clarke* and *Harris* v. *Boots Cash Chemists (Southern), Ltd.*

(2) On a conveyance of freeholds pursuant to a contract disclosing that they are subject to restrictive covenants and providing that they shall be conveyed subject thereto, the purchaser must covenant to observe and perform them. The covenant which the court will compel the purchaser to make will expressly be limited to one of indemnity (*Re Poole & Clarke*), but even if there is no such express limitation the covenant will be construed as one of indemnity (*Reckitt* v. *Cody*).

(3) In case of either freeholds or leaseholds, the purchaser may expressly covenant in terms identical with those of the existing covenants; if so, the court will regard these new covenants as fresh and independent ones, without looking to the motives with which they were entered into (*Harris* v. *Boots Cash Chemists (Southern), Ltd.*).

In the case of registered land, the position seems to be the same. In Fortescue-Brickdale and Stewart-Wallace's "The Land Registration Act, 1925" (p. 642), there is a footnote to a precedent of an instrument of transfer of the whole of freehold land comprised in a registered title to the effect that existing registered restrictive covenants need not be referred to in such an instrument because by r. 77 "the covenants for title will be construed as if they had been mentioned."

But r. 77 only provides that this shall be so in regard to the covenants under L.P.A., 1925, s. 76, i.e., the *vendor's* covenants. In regard to those of the assignee of a lease under L.P.A., s. 77, the same rule provides that reference must be made to s. 77 or to the implied covenants. Accordingly, there is no difference between registered and unregistered land as regards the covenant of indemnity of a purchaser of freeholds subject to existing restrictive covenants. The court will make him enter into such a covenant, and there is no rule by which it can be implied.

Although the law is clear, as above stated, the vendor of any freehold land subject to existing covenants will do well to insert in the contract an express provision that the purchaser shall enter into a covenant of indemnity, as it may save avoidable argument. And, of course, it must be borne in mind that a purchaser is entitled to the land free from any *undisclosed* restrictive covenants, and may rescind on discovering them: *Rudd* v. *Lascelles* [1900] 1 Ch. 815; cf. *Cato* v. *Thompson*, 9 Q.B.D. 616.

## Landlord and Tenant Notebook.

**Distress for Rates as Execution within L.T.A., 1709, s. 1.**

In *Hickman* v. *Potts* (1939), 83 Sol. J., 672, the Court of Appeal shattered an illusion long cherished by those whose business it is to levy distress for rates, namely that L.T.A., 1709, s. 1 did not apply to their business. The enactment in question provided that a landlord of premises should be entitled, as against a person suing out an execution and levying on goods on the demised premises, to up to a year's arrears of rent (later reduced in certain cases mentioned at the conclusion of this article).

The issue in the case depended entirely on the connotations of the terms "distress" and "execution," and arose in this

way. The plaintiff was landlord of premises let at a quarterly rent, and her tenant got into arrear. The defendant, acting on the instructions of the local council, levied a distress for rates and water rate in accordance with a warrant duly issued by a local justice of the peace. He failed to comply with a request for the amount of the arrears of rent—two quarters' rent less a small payment—and the action was brought for the amount in question. The county court judgment in his favour has now been reversed.

In his judgment, Goddard, L.J., first examined the differences between distress at common law and execution. Three of these are very striking. At common law, distress is an extra-judicial remedy; it entitles the aggrieved party to seize goods and hold them by way of pledge only; and it entitles him to seize goods which may not be the property of the debtor. Whereas execution requires judicial process, involves a right of sale, but does not extend to the property of third parties.

His lordship next compared distress at common law with distress by virtue of statutory enactment. It will be seen that its features approximate to the distinctive features of execution rather than to those of distress at common law.

Distress for rates was first instituted by the Poor Law Relief Act, 1601. The question whether the proceeding by which a warrant is obtained is judicial or ministerial (by now an old question) was dealt with by Lord Kenyon, C.J., in *R.* v. *Benn and Church* (1795), 6 T.R. 298, and again in *Harper* v. *Carr* (1797), 7 T.R. 270; and his lordship took a strong line in these cases, his decisions being inspired by the view that a man has a right to be heard in his own defence. Thus, in *R.* v. *Benn and Church*, discharging a rule for a *mandamus* to compel justices to grant distress warrants against ratepayers who had never been summonsed, the learned chief justice said: "A summons must precede a warrant of distress, which is *in the nature of an execution*." In *Harper* v. *Carr*, in which a churchwarden being sued for wrongful distress, wanted the justices to be joined as co-defendants, his lordship said: "The justices in granting a warrant of distress exercise a discretion after inquiring into the circumstances of the case."

An older case, referred to by Goddard, L.J., was *R.* v. *Speed* (1700), 12 Mod. 328. This arose out of the removal by *certiorari* of a conviction for deer-stealing, the conviction being statutory and the relevant statute providing in the first instance for a forfeiture and penalty "to be levied by way of distress." The conviction having been affirmed, the court issued a *levari facias*, whereupon the defendant moved to supersede it as being irregular in view of the statutory provision specifying warrant and distress. Holt, C.J., ridiculed the arguments advanced. "Though the conviction be confirmed, you would have it that *the justices* cannot give a warrant, the record being here; and if *we* cannot award execution, there is an end of the matter . . . When a statute says money 'shall be levied by distress,' this is an *execution*. *Rast. Entr.* 175." And, dealing with the distinction between distress as a mere pledge and distress which the distrainor could sell, the learned Chief Justice gave the following explanation: "But distress in a leet of common right might be sold, because it is a court of record; otherwise distress in courts not of record." And, as if to remove any possible misunderstanding, the court added a note to its judgment as to what was to be done if the distress did not yield the desired result, and there was something about a pillory in it.

This case, said Goddard, L.J., showed why the process directed by rating legislation was called "distress." Power was given to an inferior court not of record, and it was natural to describe the power by the terms used for other courts of that standing.

The learned Lord Justice also referred to one authority which might well have encouraged landlords to establish preferential rights against rating authorities, namely, *Hutchins* v. *Chambers* (1758), 1 Burr. 579. That was an action against justices, bailiffs, etc., by a distrainee who complained that horses which were beasts of the plough had been seized, though privileged from distress, and thus raised the question whether the statute De Districtione Scaccarii, 1266, was of general application. "Yet it is provided that no man of religion, nor other shall be distrained by his beasts, that gain his land, nor by his sheep for the king's debt, nor the *debt of any other* man, nor for any other cause by the king's *or other* bailiffs, but until they can find another distress." Lord Mansfield, C.J., pointing out that statutory distress was to enforce a *personal* duty, held that it was "more analogous to an execution than to a distress at common law."

Landlords seeking to establish preferential claims against local authorities under L.T.A., 1709, s. 1, could, therefore, all these years have found support in the judgments of eminent Chief Justices, namely, Lords Holt, Kenyon and Mansfield. I may observe that the authority cited by Lord Holt in *R.* v. *Speed*, *supra*, namely, *Rastelli Entrees*, appeared in 1596, i.e., before the P.L.R.A., 1601, was passed. Now the report of *Hickman* v. *Potts* at present available does not record the contentions put forward on behalf of the respondent, except for an unsuccessful invocation of the principle *communis error facit ius*. But there is at least some evidence that this *communis error* has been shared by persons in high places. For the Execution Act, 1844, s. 67, first modified L.T.A., 1709, s. 1, by enacting that no landlord of any tenement let at a weekly rent should have any claim or lien upon any goods taken in execution under the process of *any court of law* for more than four weeks' arrears of rent, and if such tenement should be let for any other term less than a year the landlord should not have any claim or lien on such goods for more than the arrears of rent accruing during *four* such terms or times of payment. So far, so good. But the County Courts Act, 1888, s. 160, as re-enacted by the County Courts Act, 1934, s. 134, after excluding from the operation of L.T.A., 1709, s. 1, goods seized in execution under process of a county court, and substituting provisions by which the county court bailiff is to distrain for rent in arrear, limits the landlord's rights as follows (subs. (4) (*b*)): (i) in a case where the tenement is let by the week, four weeks' rent; (ii) in a case where the tenement is let for any other term less than a year, the rent of *two* terms of payment; (iii) in any other case, one year's rent.

Thus one curious result follows. Suppose five months' rent to be due to a landlord of property let by the month. If a private creditor of the tenant obtains and seeks to execute a county court judgment, the landlord may step in and demand a rake-off which is limited to two months' arrears; but if the local council obtain a distress warrant for rates from the local police court, the landlord's preferential claim will extend to four months' rent. It certainly does not appear to have occurred to the Parliament which passed the Distress for Rates Act, 1849, that the 1709 Statute gave landlords prior claims.

Nor, for that matter, do ss. 19 *et seq.* of the Summary Jurisdiction Act, 1848, directing that where a conviction adjudges a pecuniary penalty or compensation to be paid, etc., and by the Statute authorising, etc., such penalty, etc., is to be levied upon the goods and chattels of the defendant by distress and sale thereof the justice is to issue his warrant of distress, contain any reference to rent or L.T.A., 1709; so that if such distresses be executions, constables will, according to the new decisions, have to account to landlords claiming arrears. On the other hand, the Taxes Management Act, 1880, s. 86 *et seq.*, and the Income Tax Act, 1918, s. 162 *et seq.*, provide for "distress" without judicial process, so such levies would not be executions.

# Our County Court Letter.

## DELAY IN COMPLETION OF HOUSE.

In *Harvey* v. *Milton Estates, Ltd.*, at Liverpool County Court, the claim was for the return of £25, paid as a deposit on the purchase of a house. The defence was that, as the plaintiff was not entitled to reject the house, the deposit had been forfeited. A counter-claim was made for a sum in respect of the use and occupation of the house. The plaintiff's case was that, after viewing a show house, he agreed in July, 1938, to buy a house for £399. A salesman of the defendants undertook that the house should be similar to the show house, and that it should be finished by the 6th August. Nevertheless, on the 21st August there were no paths, no front doorstep, no hot water, and neither the electric light nor the electric stove would work. On the 27th August, having had to leave his old house, the plaintiff and his wife and four children went into the house, whereupon the defendants sent two boys, who did some plastering and painting. On the 5th November, however, the plaintiff's patience was exhausted, and he left the house, which was still vacant. Inasmuch as the contract was for a completed house, the plaintiff was entitled to recover his deposit. The defence was that the matters complained of could have been put right for between £5 and £10. The woodwork was good, for a house of that type, and the interior paintwork was satisfactory. His Honour Judge Dowdall, K.C., held that, having entered into possession, the plaintiff was entitled to have the faults put right, but was not entitled to reject the house. Judgment was given for the plaintiff for £10 10s., and for the defendant for £6 5s. on the counter-claim, the costs to be set off. Compare *Otto* v. *Bolton & Norris* (1936), 80 Sol. J. 306.

## THE CONSTRUCTION OF BUNGALOWS.

In *Bircher* v. *Macey*, recently heard at Gloucester County Court, the claim was for the return of certain building materials or £12 2s., their value, and £5 as damages for their detention. The counter-claim was for £100 as damages for breach of contract, viz., bad workmanship in the construction of a bungalow. The latter had been supplied in sections from the manufacturers, and the plaintiff, after laying the foundations and building the chimney, had assembled the sections in accordance with the makers' directions. The defendant was apparently satisfied, on completion of the work, but she would not allow the removal of the plaintiff's materials. Expert evidence was given that any defects in the bungalow were due to its inferior quality, and not to any omission of the plaintiff. The defendant's case was that the building materials were her own property and should have been utilised to remedy the defects. Smoke from the kitchen fire issued from the joists of the ceiling, the asbestos sheets on the walls rattled at night, the roof leaked and the gutters overflowed in rainy weather. His Honour Judge Kennedy, K.C., observed that, in spite of the shoddy erection, a building society had lent £200—apparently without investigation of the quality of the building. The plaintiff had supplied and erected the bungalow in accordance with specifications supplied by the defendant from a brochure. There was no immediate dissatisfaction expressed by the defendant, and the dispute only arose over the question of ownership of building materials. The plaintiff was not responsible for the quality, size and suitability of the bungalow, and he was willing to remedy certain small defects. Subject to his doing this, the counter-claim failed, but, as the plaintiff had admitted liability to that extent, he was only allowed five-eighths of the costs of the counter-claim. On the claim, judgment was given for the plaintiff for the delivery up of the materials within seven days, or the payment of £12 2s., their value, and costs. The plaintiff was not entitled to damages, however, as the defendant should have been credited with £2 4s., the value of material not used owing to alterations in the plan.

# Reviews.

*The Law Relating to Dilapidations and Waste.* By W. T. Creswell, K.C., assisted by Norman P. Greig, B.A., of the Inner Temple, Barrister-at-Law. Second Edition, 1939. Crown 8vo. pp. xxvi and (with Index) 191. London: The Builder, Ltd. 8s. 6d. net.

This is a "small" book with a wide range. It deals not only with such matters as the construction of repairing covenants in general, and with liability apart from covenant, but also with the special positions of flats, agricultural holdings, ecclesiastical property, etc. Apart from indicating the law, it contains a good deal of sound practical advice as to procedure which will prove helpful to legal practitioners and surveyors, and ultimately to their clients.

More than 250 decisions are summarised or referred to. It is, perhaps, to be regretted that undue prominence is occasionally given to authorities which have been overruled, such as *Miller* v. *Hancock* (misspelt "*Handcock*") and *Haskell* v. *Marlow*; the allowing of the appeal in *Taylor* v. *Webb* [1937] 2 K.B. 283, C.A., is not referred to at all when the definition of "Fair wear and tear" is discussed in Chap. I, and is somewhat curtly mentioned in Chap. IV (which is headed "Fair wear and tear" though it deals with a number of other and unconnected matters as well). When defining "repair," the interpretation placed upon that expression in *Bishop* v. *Consolidated London Properties, Ltd.* (1933), 102 L.J.K.B. 257, should have been mentioned, for since then the term is not limited to replacement of existing parts, but embraces the removal of extraneous matter. *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131, C.A., did not *decide* that the breaking of a window cord did not constitute a breach of the statutory covenant of fitness for human habitation; two *obiter dicta* favoured that proposition, and one was to the opposite effect. And *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, shows that a landlord may be liable for nuisance though *not* under an obligation to repair, if he has reserved the right to do so. But, if allowance be made for these blemishes, the new edition will prove a useful addition to the library of anyone concerned with the settlement of disputes about dilapidations, amicably or otherwise.

*Arbitration and Awards.* By Ranking, Spicer and Pegler. Seventh Edition. 1939. Edited by W. W. Bigg, F.C.A., F.S.A.A., and C. A. Saler, LL.B., F.S.A.A. Medium 8vo. pp. xxiv and (with Index) 210. London: H.F.L. (Publishers), Ltd. 7s. 6d. net.

The continued popularity of arbitration may be gauged from the fact that the above book, which was first published in 1911, has now reached its seventh edition. The editors have preserved the plan of the authors, and the opportunity has been taken of clarifying certain portions of the text and of introducing recent case decisions.

## Books Received.

*Tolley's Complete Income Tax Chart Manual.* By Chas. H. Tolley, A.C.I.S., F.A.A., Accountant. Twenty-fourth Edition, 1939. London: Waterlow & Sons, Ltd. 4s. post free, including Eire Supplement. "N.D.C." Supplement, 8d. extra.

*Private Companies: Their Management and Statutory Obligations.* By Stanley Borrie, Solicitor. Fifth Edition, 1939. Demy 8vo. pp. xii and (with Index) 205. London: Jordan & Sons, Ltd. 5s. net.

*Strahan's Digest of Equity.* Sixth Edition, 1939. By R. A. Eastwood, LL.D., of Gray's Inn and the Northern Circuit, Barrister-at-Law. Demy 8vo. pp. xxxi and (with Index) 642. London: Butterworth & Co. (Publishers), Ltd. 22s. 6d. net.

# To-day and Yesterday.

## Legal Calendar.

21 August.—In the eighteenth century ruinous quarters added to the hardships of the debtors in the Fleet Prison. On the 21st August, 1768, the foundations of a large chimney stack in the centre of the buildings collapsed and ten apartments, providing lodging for nearly forty persons, were destroyed, the occupants losing all they had and many of them being seriously injured. The surveyor from the Treasury who came to inspect the damage found the whole prison in a perilously dilapidated condition.

22 August.—On the 22nd August, 1861, Peter Masterton, of the Royal Artillery, stationed at Woolwich, was tried at the Old Bailey for the murder of Serjeant Murphy. A patrol had found him partially intoxicated in the streets of the town and had brought him to the guard-room. Unfortunately, the N.C.O. on duty there happened to be a serjeant to whom he owed a grudge for a previous arrest. Half an hour after his arrival he seized a heavy poker and struck him savagely on the head, inflicting fatal injuries. The jury convicted him, adding a recommendation for mercy. He showed callous unconcern throughout his trial, and when the judge warned him not to expect a reprieve he received the announcement with derision.

23 August.—Ilay Campbell, eldest son of Archibald Campbell of Succoth, one of the principal clerks of Session, was born on the 23rd August, 1734. He went to the Bar and achieved a spectacular triumph in the *Douglas Peerage Case* as counsel for the appellant. Immediately after the decision in the House of Lords he posted to Edinburgh and was the first to announce the news to the crowds, who unharnessed the horses from his carriage and drew him in triumph to his father's house. In 1789 he became Lord President of the Court of Session as Lord Succoth.

24 August.—At the Assizes for the County of Norfolk a curious story was told on the 24th August, 1772. The plaintiff was a Cambridge clergyman whose father many years before from a variety of distressful circumstances had been reduced to the melancholy situation of wanting bread, and after becoming an hostler at a London inn and marrying the maid, had fallen into beggary. While the unfortunate man was wandering about unknown, his father had died and his elder brother had taken possession of the estate. Now came a dramatic turn of events. The ruined man had died without ever imagining that he had any rights in law, but his son, the plaintiff, having learnt that the estate was held in gavelkind, now brought an action against his uncle to recover his father's right of inheritance and obtained a verdict.

25 August.—On the 25th August, 1604, James I appointed Francis Bacon "*consiliarium nostrum ad legem, sive unum de consilio nostro erudito in lege.*"

26 August.—A letter dated the 26th August, 1680, describes the death of Bedloe, the perjurer, who played such a sinister part in the "Popish Plot" trials: "Here is great lamentations for the death of Capn. Bedlow who dyed at Bristow of a feavour occasioned by drinking cyder whilst he wase very hot, having rid post. My Ld. Cheif Just. North, whilst he wase sicke, wase at Bristowe in his circuit, and, at his desire, went to him . . . The well affected (as they are called) of the protestant religion at Bristow were at the charge of his funerall."

27 August.—On the 27th August, 1887, Arthur Charles, Q.C., staying at the Marine Hotel, Bray, received the following telegram: "Judex rude donatus petit quietem volo veniam reginæ petere te nominare sedei vacanti oportet respondere quia mensibus proximis novus judex munere fungatur. Cancellarius." Thus, because Queen Victoria disliked appointments being made known to the public till confirmed by herself, did Lord Halsbury offer Charles a judgeship at a distance.

## The Week's Personality.

That the rank of King's Counsel starts with Francis Bacon is certain, but how much that status at first implied is by no means so clear. With regard to the patent granted him in 1604 by James I he later wrote: "You formed me of the learned counsel extraordinary without warrant or fee, a kind of *individuum vagum*. You established me and brought me into ordinary. Soon after you placed me solicitor." He had occupied a similar sort of position under Elizabeth and on its real obligations must to some extent depend one's estimate of his character, for it bears on his equivocal conduct in relation to the trial of the Earl of Essex, his friend and benefactor. If he was bound by the obligations of his office to take a leading part in the prosecution, his absolute and compulsory duty offers a good excuse. If, on the other hand, his status was really nebulous, it is not so easy to condone his zeal or to acquit him wholly of a discreditable opportunism in attempting thus to ingratiate himself with the Queen. Legal history seems to show that it was King James who first put his office on a regular basis. From then on the duty of a King's Counsel seems to have been to give assistance and advice to the Law Officers, till towards the end of the century their position became rather one of honour than office.

## The Man Who Broke the Bank.

Towards the end of last term a dispute over the use of the title "The Man who Broke the Bank at Monte Carlo" brought back memories of their youth to the Lords of the Judicial Committee of the Privy Council, and one memory was solid flesh and blood for old Charles Coborn, who made the song famous, came and listened. No doubt some of them gave a thought to that incorrigible optimist, Charles Wells, who inspired the song by breaking the bank at Monte Carlo five days in succession. He was by way of being a prolific inventor (of the school of the White Knight). To his credit there stood, *inter alia*, a musical skipping rope and a new tin opener. A process designed to halve coal consumption in steamers brought him to the Old Bailey over a matter of £30,000, which he had procured from various people to exploit it. One of these was the wealthy Miss Phillimore, sister of the celebrated Lord of Appeal. He produced a gutterally incoherent German bursting with obscure technicalities to give expert evidence of the excellence of the invention. In the dock Wells, often dancing with excitement, dashed off innumerable notes to his counsel and attracted the usher's attention by tickling his bald pate with the end of the quill.

## False Hopes.

His counsel argued that had he not won £40,000 in five days and got the reputation of a wild gambler he would never have stood in the dock. He hinted that it was by an infallible system that Wells had broken the bank, declaring: "Why, if it got abroad that £8,000 could be won in a day at Monte Carlo there would at once be an exodus, and wigs and gowns might be bought for an old song. My learned friends can make £8,000 a day, the gentlemen of the jury can make £8,000 a day, and my lord can make such a vast sum by this exceedingly simple system that he will never need to worry about money again. And now I am going to tell you what this system is." Not only the jury, but Hawkins, J., on the Bench were by this time all agog to hear the golden mystery revealed, but after a pause the advocate went on: "No, gentlemen of the jury, I will not tell you this system. If I were to do so you might desert your wives and families, my learned friends might sell their wigs and gowns, and even my lord who adorns the Bench might suddenly desert it to make a vast sum." That day at lunch with the sheriffs he had to confess to Hawkins that he had no idea what the system (if any) was.

# Notes of Cases.

## Judicial Committee of the Privy Council.

### Matthen & Others *v.* The District Magistrate, Trivandrum & Others.

Lord Thankerton, Lord Porter and Sir George Lowndes.
6th June, 1939.

India — Criminal Law — Procedure — *Habeas corpus* — Jurisdiction of High Court Judge to Issue Writ on Application in respect of Person alleged to be Improperly Detained in Custody—Application to be treated as one under Criminal Procedure Code—Extradition Warrant—Right of Person to whom Custody Granted in Warrant to Resist Application under Code—Procedure on Application—Requirements as to Form of Warrant—Code of Criminal Procedure (Act V of 1898), s. 491—Indian Extradition Act (XV of 1903), ss. 8A, 22—Madras High Court Appellate Side Rules, rr. 2, 2A.

Appeal from (1) a decision of the Full Bench of the High Court, Madras, given on a reference to them by a Division Bench of the same court, that orders given by Pandrang Row, J., on an application for a writ of *habeas corpus*, and relative applications, were null and void; (2) a judgment of the Division Bench given by way of implementing that decision of the Full Bench; and (3) a judgment of the Division Bench dismissing the application for the writ of *habeas corpus*.

Warrants (undated) were issued by the Resident for the Madras States under s. 7 of the Indian Extradition Act, 1903, to the Chief Presidency Magistrate, Madras, the second respondent, for the arrest of the four present appellants. Each warrant stated that the respective appellant stood charged with offences punishable under ss. 410, 419, 421, 480, and ss. 99 and 104 of the Travancore Penal Code, corresponding to ss. 409, 418, 420, 477A, 109 and 114 of the Indian Penal Code, committed in the State of Travancore, directing the magistrate to apprehend him and surrender him to the frontier police station of Travancore State for production before the District Magistrate, Trivandrum, the first respondent. The appellants were all arrested in Madras under the warrants on the instructions of the Chief Presidency Magistrate on the 20th October, 1938. They were described in the warrants as directors of the Travancore National & Quilon Bank, Ltd. (in liquidation), but the fourth appellant denied that he was a director. On the 21st October, when the appellants were about to be sent away, a petition (985 of 1938) was presented under s. 491 of the Code of Criminal Procedure for a writ of *habeas corpus* in respect of all the appellants to Pandrang Row, J., together with a petition (986 of 1938) asking for a stay of execution of the warrants. On petition 986 the judge ordered the Chief Presidency Magistrate to detain the appellants in his own custody and not send them away. Later, on the same day, the Crown Prosecutor presented a petition (990) for vacation of Pandrang Row, J.'s, order on petition 986 on the ground that it had been made without jurisdiction, as, under r. 2A of the Madras High Court Appellate Side Rules, jurisdiction under s. 491 of the Criminal Procedure Code could only be exercised by a Bench of the High Court. Pandrang Row, J., on the 24th October, dismissed petition 990, holding that he was bound by *In re Govindan Nair* (1922), I.L.R. 45 Mad. 922, and that his jurisdiction could not be taken away by rules. On the 26th October, Pandrang Row, J., granted petition 985, and made an order that a writ *nisi* of *habeas corpus* should issue to the Chief Presidency Magistrate, and should be returnable before the judge himself on the 28th. On the 26th the first respondent presented a petition (1003), supported by the Superintendent of Police, C.I.D., Travancore, to the High Court under s. 561A of the Code of Criminal Procedure, and s. 223 of the Government of India Act, 1935, that Pandrang Row, J.'s, various orders should be quashed for lack of jurisdiction. A Division Bench (Burn and Stodart, JJ.), having made an order suspending the operation of the writ *nisi*, referred questions of law to a Full Bench, who on the 4th November held that Pandrang Row, J., had no power to issue the writ, and that the application (985) under s. 491 of the Code must be dealt with by the Criminal Bench. Burn and Stodart, JJ., accordingly made orders dismissing petition 985, and allowing petition 1003. Against that judgment and those two orders the present appeal was brought.

Lord Thankerton, delivering the judgment of the Board, said that the first respondent was clearly entitled to intervene, so that petition 1003 was competent, he being the authority to whom, under the warrants, the appellants were to be delivered. The Board agreed with the Full Bench that statutes passed in 1875 and since showed that the legislature had taken away the power to issue the prerogative writ of *habeas corpus* in matters contemplated by s. 491 of the Code of Criminal Procedure. Petition 985 must accordingly be treated as an application under s. 491. The Board were unable to accept the appellants' contention that rr. 2 and 2A of the Appellate Side Rules (which provided that applications for a writ of *habeas corpus* should go before a Bench of two judges dealing with criminal work) did not apply to applications under s. 491 for the setting at liberty of a person alleged to be illegally detained. Finally, the warrants were adequate in form. While it was desirable, it was not imperative, that they should be dated. The appeals must be dismissed.

Counsel: *D. N. Pritt*, K.C., *C. Sidney Smith* and *K. Menon*; *Sir William Jowitt*, K.C., and *John Foster*; *J. M. Tucker*, K.C., *W. Wallach* and *J. Megaw*.

Solicitors: *Hy. S. L. Polak & Co.*; *Sanderson, Lee & Co.*; *The Solicitor, India Office*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

## House of Lords.

### Shacklock *v.* Ethorpe, Ltd.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright and Lord Porter.
27th June, 1939.

Hotel—Theft of Guest's Jewellery from Bedroom—Whether failure to deposit Jewellery at Office Negligent—Guest's Right to Recover from Hotel Proprietor.

Appeal from a decision of the Court of Appeal, 82 Sol. J. 293; 54 T.L.R. 665, reversing a decision of Greaves-Lord, J., 82 Sol. J. 77; 54 T.L.R. 224.

The appellant brought an action against the defendant company, the proprietors of the Bull Hotel, Gerrard's Cross, claiming £602 10s., the value of jewellery, which was stolen from a locked jewel case inside a locked dressing case in her room. The theft occurred while the plaintiff was on a visit to London, the thief having booked a room by telephone after the plaintiff's departure on the day in question. He broke open the dressing case, and was subsequently convicted of the theft. The defendants contended that the loss was caused or contributed to by the negligence of the plaintiff in failing to take steps to safeguard the jewellery, and in not depositing it with them. The hotel was a small one with some twenty bedrooms. The internal arrangements were such that the comings and goings of guests and visitors were under the observation of the staff. It was not the practice of guests to lock their bedroom doors and leave their keys at the office. No notice requesting that to be done was placed in the bedrooms or anywhere else in the hotel. There were no duplicate keys or master key for the use of the staff, and on one occasion when the appellant had locked her bedroom door and taken the key away with her she found on her return that her bedroom had not been attended to, as the chambermaid

could not get access to it. Greaves-Lord, J., held that the appellant was entitled to recover, and that the loss was not caused or contributed to by negligence on her part. The Court of Appeal held that she failed to take due care by omitting to deposit her jewellery in the office of the hotel. She now appealed. (*Cur. adv. vult.*)

LORD MACMILLAN said that apparently no previous case on that branch of the law had reached that House. The law was not, however, really in dispute; by the common law of England an innkeeper was responsible to his guests if any of their goods were lost or stolen while on his premises. As it was put so long ago as 1550, in argument in *Reniger* v. *Fogossa* (1 Plowden 1, at p. 9), "by the common custom of the realm hosts shall be charged for the goods of their guests lost or stolen out of their houses." The principle, the origin of which was discussed by Lord Esher in *Nugent* v. *Smith* (1875), 1 C.P.D. 19, was common to most, if not all, systems of jurisprudence. The innkeeper's liability existed quite apart from any question of negligence on his part. His lordship referred to the judgment of Lord Esher in *Robins & Co.* v. *Gray* [1895] 2 Q.B. 501, at pp. 503-4. It had, however, always been the law that the innkeeper could escape liability if he could show that "the negligence of the guest occasions the loss in such a way as that the loss would not have happened if the guest had used the ordinary care that a prudent man might be reasonably expected to take under the circumstances": see per Erle, J. delivering the judgment of the court in *Cashill* v. *Wright* (1856), 6 E. & B. 892, at p. 900. The innkeeper's defence was not based on the breach of any duty owed to him by his guest, but simply on the plea that the loss or theft of his guest's property was due to the guest's own carelessness. It was technically inaccurate to speak of the guest's contributory negligence. Both the trial judge and the Court of Appeal asked themselves the right question, namely, whether the respondents had proved that the appellant by her conduct was herself to blame for the loss of her property, but they had given different answers to the question. The main points on which the respondents relied were that she did not lock her bedroom door and leave the key at the office, and that she did not, as she ought to have done, deposit her jewellery in the office for safe keeping. On the facts he agreed with Slesser, L.J., that to leave the door unlocked was not negligent on the appellant's part. His lordship referred to the judgment of Montague Smith, J., in *Oppenheim* v. *White Lion Hotel Co.* (1871), 6 C.P. 515, at p. 522. He did not doubt that, if a guest took jewels of exceptional value to an hotel, that rendered it proper for him to take special precautions, for example, by locking his bedroom door or depositing the articles with the hotel keeper; but the appellant's jewels were of an ordinary description such as any lady of her position might have with her. The question was whether, in not depositing her jewellery in the office, she had failed to take the ordinary care that a prudent person might reasonably be expected to take in the circumstances. In his opinion the trial judge's conclusion was, in all the circumstances, justified, and ought not to have been disturbed. The appeal should be allowed.

The other noble lords concurred.

COUNSEL: *G. Beyfus*, K.C. and *S. Gates*; *N. L. C. Macaskie*, K.C., and *M. Berryman*.

SOLICITORS: *Vickress & Clare*; *Berrymans*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## Court of Appeal.

### *In re* Colin Cooper; Le Neve Foster *v.* National Provincial Bank, Ltd.

Greene, M.R., Clauson and Goddard, L.JJ.
6th July, 1939.

WILL—LEGACY—SECRET TRUST—ORAL COMMUNICATION TO TRUSTEES—LATER WILL—FURTHER SUM LEFT TO TRUSTEES—EFFECT.

Appeal from Crossman, J. (83 SOL. J. 378).

On the 13th July, 1931, the testator made a will appointing C.T., F.F. and F.W. executors and trustees. On the 10th February, 1938, he made a second will expressly revoking the first and appointing F.F., F.W. and the defendant bank executors and trustees. By cl. 6 he bequeathed £5,000 free of duty to F.F. and F.W. "upon the trusts which I have already communicated to them with respect thereto." He had previously communicated his wishes orally to F.W. and to one of the attesting witnesses representing F.F., who was then abroad, but to whom they were made known immediately on his return. The sum was to be held on trust for investment in securities authorised by law for trust funds, with power to vary, the income being held on protective trusts for the benefit of a named person for life, with a provision that on death the capital was to fall into the residue of the testator's estate. Subsequently the testator fell ill in Africa and on the 27th March, 1938, two days before his death, he signed a document as follows: "This is my last will and cancels the will I made about the 8th or 9th February, 1938, before leaving England and puts back in its complete form the previous will with the exception that my executors will be F.F. and the National Provincial Bank . . . The sum of £5,000 bequeathed to my trustees in the will now cancelled is to be increased to £10,000, they knowing my wishes regarding this sum." The document and the two previous wills were admitted to probate as representing the testator's will and treated as the document in which his last will was contained. Crossman, J., held the original gift of £5,000 was subject to an effective trust, but not the added gift of £5,000.

GREENE, M.R., dismissing the beneficiary's appeal, said that it was impossible to give effect to what the testator obviously desired because he had not taken the steps which the law required to enable that desire to become effective. If a testator wished to use the machinery of a secret trust certain elements must be present: communication to the trustees, acceptance by the trustees and execution of the will in reliance on that acceptance: see *Blackwell* v. *Blackwell* [1929] A.C., at pp. 329, 334, 341. Here the giving of the £5,000 by the will of the 10th February, 1938, complied with these requirements, but the only trust then in the picture related to the defined and stated sum of £5,000. The will of March, 1938, in effect gave another gift. Where a testator declared trusts in relation to a specified sum and afterwards inserted a lesser sum it would probably be held that the greater included the less. But there was no ground to justify the court in treating the reference to the specific sum here as having a significance so loose and indeterminate that it could be expanded at will.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *Vaisey*, K.C., and *Roger Turnbull*; *J. Nesbitt*; *Wilfrid Hunt*.

SOLICITORS: *Elvy Robb & Co.*; *Warren, Murton, Foster and Swan*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Angfartygs A/B Halfdan *v.* Price & Pierce, Ltd.

Greene, M.R., MacKinnon and Finlay, L.JJ.
14th and 17th July, 1939.

SHIPPING—CHARTERPARTY—TIMBER—FULL AND COMPLETE LOAD—SPACES LEFT BY LOADING BUNDLED TIMBER—RIGHT OF SHIPPER TO TENDER BUNDLED TIMBER—SHIP IN FACT FULLY LOADED—RIGHTS OF SHIPOWNER.

Appeal from Atkinson, J. (83 SOL. J. 239).

By a charterparty, made in 1937, between the plaintiffs, shipowners, and a firm of timber merchants, whose agents were the defendants, the shippers chartered from the owners a vessel of a carrying capacity of about 750 standards of timber to load at a named port in Finland a full and complete cargo of "mill sawn red and/or white firwood deals and/or battens and/or boards and/or scantlings and/or slatings in bundles and/or laths in bundles and/or planed boards and/or floorings

(the quantity of slatings to consist of about eighty standards, the quantity of laths to consist of about thirty standards . . .), with a sufficient quantity of ends, eight feet and under, for broken stowage only. . . ." The charterparty was in the Baltwood form approved by the Timber Trade Federation. The ship duly loaded with a cargo of some 727 standards, including 294 standards of bundled boards (i.e., roped together), and was fully loaded in the sense that she would not hold any more timber or broken stowage. The cargo contained 401 standards of bundled timber, although only 110 standards of bundled timber were specified in the charterparty. It was admitted that on average 10 per cent. more timber could be stowed unbundled than bundled as the stowing of bundled timber involved leaving vacant spaces. The plaintiffs challenged the shippers' right to ship more bundled timber than specified in the charterparty and claimed to be entitled to dead freight in respect of some thirty standards, amounting to £66. Atkinson, J., dismissed the action, holding that the charterers had loaded a full and complete cargo. He found that weather-boards came within the description " boards or planed boards " in the charterparty, and that it was the universal practice to ship them bundled. As to the sawn boards, he found that boards $\frac{5}{8}$ in. and $\frac{3}{4}$ in. thick by 4 in. were often bundled and that boards $1\frac{1}{4}$ in. thick by 3 in. were practically always bundled.

GREENE, M.R., dismissing the shipowners' appeal, said that the case must be approached on the basis of those findings of fact. The shipowners had argued that it was not open to the charterers with regard to certain of the goods falling within the descriptions in the charterparty, e.g., weather-boards, to load them at all, on the ground that the right to load them was taken away by the words " full and complete cargo," since, if the weather-boards were loaded in the natural manner, i.e., bundled, there would not be as full and complete a cargo as if they were loaded loose. It was said that the words " full and complete cargo " had a definite and final meaning as a matter of law and that once they appeared everything else in the contract must yield to them. That was not the right way to construe this charterparty, which dealt with a full and complete cargo of specified goods. What was a full and complete cargo with relation to those goods must be determined when the nature of the goods was ascertained and the usual methods of loading them established. The argument of the shipowners was that if the charterers found in such a case as this that the specified goods could only be loaded bundled he could not load them at all and that where they found that, according to the custom of the port, they were sometimes loaded unbundled and sometimes bundled, the charterparty forced them to adopt the unbundled method. But the words in question were to be construed not *in vacuo* but with reference to the whole clause, and the subject-matter with which it dealt: *Cuthbert* v. *Cumming*, 11 Ex. 405, did not help the appellants. These words did not prevent the charterers from adopting the usual method of stowage, and the fact that there was more than one usual method did not alter the result.

MACKINNON and FINLAY, L.JJ., agreed.

COUNSEL: *Sir Robert Aske*, K.C., and *A. Roskill*; *Alchin* and *P. Dean*.

SOLICITORS: *Sinclair, Roche & Temperley*; *William A. Crump & Son*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## Appeals from County Courts.

### Hickman *v.* Potts.

Scott, Clauson and Goddard, L.JJ.
13th, 14th and 25th July, 1939.

RATING AND VALUATION—DISTRESS FOR RATES—WHETHER " EXECUTION "—LANDLORD AND TENANT ACT, 1709 (8 Anne, c. 14), s. 1—DISTRESS FOR RATES ACT, 1849 (12 & 13 Vict., c. 14), s. 1.

Appeal from Wolverhampton County Court.

The plaintiff owned certain premises controlled by the Rent Restrictions Acts and let on a quarterly tenancy at £5 7s. a quarter. The tenant having fallen into arrears with the rent, the plaintiff on the 10th August, 1938, obtained from the county court an order giving leave to distrain, which was, however, suspended so long as the tenant paid 15s. a week off the arrears, besides the rent as it fell due. On the 11th August, pursuant to the Distress for Rates Act, 1849, a warrant of distress for rates was granted by a justice of the peace for the borough and on the 20th September the defendant, as bailiff for the Corporation of Wolverhampton, levied a distress thereunder on the tenant. Meanwhile the tenant had made default in the payments due in respect of his tenancy, and on the 29th September the plaintiff was in a position to distrain for a sum of £15 11s. On the 4th October the plaintiff's solicitors gave the defendant notice that their client claimed the amount due for rent as having the first claim on the assets (i.e., the proceeds of the sale of the distress). In an action His Honour Judge Tebbs dismissed the plaintiff's claim for £15 11s. damages.

GODDARD, L.J., delivering the court's judgment allowing the appeal, said that the only point was whether the levying of a distress for rates under a justice's warrant was an " execution " within the Landlord and Tenant Act, 1709, s. 1. The lien given to the landlord by s. 1 had been the subject of certain subsequent enactments which did not affect the present case. From the County Courts Act, 1888, s. 160, it was clear that " execution " in the 1709 Act was not limited to the process of the superior courts and that a levy by a county court bailiff would have been an execution within it but for the provisions of that section. Though in Stone's " Justices' Manual " the opinion was expressed that the 1709 Act did not apply to a distress for rates, no authorities were cited in support of it. It was to be noted that the term " distress " had often been applied to a process which was in reality an execution. It was not till 1690 that a right of sale of a distress for rent was conferred (2 Will. & Mar., c. 5). To this day animals distrained damage feasant could not be sold to provide compensation for the distrainer, but only to recoup him for the cost of providing them with food and water, a duty laid on him by the Cruelty to Animals Act, 1849. Distress had been the subject of many statutes extending the remedy in favour of landlords and limiting it in favour of tenants and persons having property on demised premises. Beasts of the plough were exempted unless no other sufficient distress could be taken (51 Hen. 3). Later legislation had protected wearing apparel, bedding and tools. At common law things in a man's actual use, e.g., the horse he was riding (*Storey* v. *Robinson*, 6 Term Rep. 138), or a loom in use by a weaver (*Simpson* v. *Hartopp*, Willes 512), could not be distrained. In modern times legislation had been passed to protect lodgers. Comparing this state of things with an execution which was essentially the process of a court, a distress required no legal process, as a landlord might distrain with his own hands: *Ex parte Birmingham and Staffordshire Gas Light Co.*, L.R. 11 Eq. 615. An execution creditor might nominate to the sheriff a special bailiff to execute the writ and could nominate himself, but then he would levy by virtue of the sheriff's warrant, unlike a distrainer who could, if he pleased, distrain by his own hand or by his appointed bailiff. A distress for rates was a purely statutory proceeding. The chief changes which the 1849 Act effected were enabling a warrant to be issued by one justice, enabling the overseers to recover the costs of distraining, providing for committal to prison for want of distress and prescribing the form of complaint, summons and warrant. The question was whether the levying of a distress for rates would have been regarded by the lawyers of 1709 as an execution. Justices were capable of forming a court of law. The issue of a distress warrant for rates was a judicial and not a ministerial act:

*R.* v. *Benn and Church*, 6 Term Rep. 198; *Harper* v. *Carr*, 7 Term Rep. 270. The warrant was directed to the overseers themselves and not to the sheriff or other officer, so that the execution of the warrant being left to the party obtaining it was in that respect analogous to a distress. The true reason was probably to be found in *R.* v. *Speed*, 12 Mod. Rep. 328. The levying of a penalty imposed by a court of criminal jurisdiction was a form of execution. His lordship concluded that this process was a distress in name only and was in fact execution.

COUNSEL: *Denning*, K.C., and *J. Whitehead*; *Montgomery*, K.C., and *Thorneycroft*.

SOLICITORS: *Simon, Haynes, Barlas & Ireland*, for *Feibusch & Wells*, of Wolverhampton; *Sharpe, Pritchard & Co.*, for *J. B. Allon*, of Wolverhampton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

### Provender Millers (Winchester), Ltd. *v.* Southampton County Council.

Farwell, J. 4th, 5th, 6th, 7th, 11th, 12th, 13th, 14th, 17th and 18th July, 1939.

WATER AND WATERWAYS — RIVER — ALTERATION IN CHANNEL—WORKS BY PUBLIC AUTHORITY—DIMINUTION IN FLOW—LIABILITY.

The plaintiffs were millers in Winchester with a mill obtaining water power from the Itchen. The defendants were the local authority responsible for the maintenance of the roads in Winchester including bridges. A highway or bridge known as Broadway crossing the Abbey Stream (which ran approximately parallel with the Itchen and was connected with it at divers points) was vested in the defendants as the public authority, as was also so much of the bed of the stream as was thereunder, and it was their statutory duty to do all things necessary to maintain it. Till October, 1937, the plaintiffs had always had a sufficient flow of water to get a head at their mill and keep the turbine turning. In that month the flow diminished so as to be insufficient to work the turbine properly. On investigation it was found that at a channel or connection between the Itchen above the mill and the Abbey Stream the water was running out of the former and into the latter, whereas it had previously flowed the other way. At that time the defendants had just completed certain works at the Broadway which lay below this channel. At that point the Abbey Stream divided into two streams, both of which were eventually carried together through a culvert and out at the other side of Broadway. The defendants had been advised that certain works were necessary because (1) the culvert had fallen into disrepair and there was danger to the highway, and (2) in times of flood water escaped on to the highway. It had, therefore, been necessary to rebuild the culvert so as to afford the road greater support and to provide an outlet for the flood water. The defendants had set about doing the works without giving notice to anyone. The old culvert which had had no artificial bottom was removed. The new culvert, which was properly put in with proper workmanship, provided a much wider channel with a cement floor. No part of the stream outside the culvert was altered. After the work there was a considerable increase in the amount of water flowing down the Abbey Stream. The water which had previously been held up at the culvert used to form a head at that point which had spread up the stream, affecting its height and enabling water to flow from it through the channel into the Itchen. The plaintiffs now sought an injunction to restrain the diminution of the water flowing to their mill.

FARWELL, J., said that once a riparian owner could show that his rights to the natural flow of the river had been prejudiced by another he was entitled to relief. The extent to which he was affected must be appreciable as the mere abstraction of a very small quantity of water might well be insufficient to entitle him to an injunction. Here, if the defendants had been private persons, there would have been no doubt but that the plaintiffs were entitled to relief. The position of the defendants acting under statutory powers was that the way in which they set about their duties was a matter for them. They must do them properly and protect so far as possible the rights of third parties. Their statutory obligations did not entitle them to invade the rights of others unless they could be performed in no other way save one which involved damage to other parties. His lordship referred to *Manchester Corporation* v. *Farnworth* [1930] A.C., at p. 183, the speech of Lord Dunedin, and said that defendants in the position of the county council might have a defence if the only way of doing the work without causing damage was some fantastic method quite unsuited to the object in view. His lordship also referred to the speech of Lord Macnaghten in *East Freemantle Corporation* v. *Annois* [1902] A.C., at p. 217, and said that it must be read in the light of the particular facts of the case. There the Legislature had authorised the actual thing done and so, unless the work was improperly performed, the corporation could not be made liable for damage suffered by other persons. In some cases it had been said that a corporation or council of this sort could not be liable for damage to other persons if it could be shown that the work had been done properly in a reasonable way and not negligently. For that purpose negligence as used in those cases meant adopting a method which did in fact result in damage to a third person, save in a case where it could be shown that there was no other way of performing the statutory duty. The onus was on the defendants to show that there was no other way. Though here there was evidence that the result which followed from the work could not easily have been foreseen, the plaintiffs were entitled to relief.

COUNSEL: *Harman*, K.C., and *Wilfrid Hunt*; *Gover*, K.C., *Roger Turnbull* and *Hesketh*.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Bell, Pope, Bridgwater & Hughes*, of Southampton; *Robbins, Olivey and Lake*, for *F. V. Barber*, of Winchester.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Bond *v.* Nottingham Corporation.

Simonds, J. 19th July, 1939.

HOUSING—CLEARANCE ORDER—PROPOSAL TO DEMOLISH HOUSE—ADJOINING HOUSE OUTSIDE CLEARANCE AREA ENJOYING EASEMENT OF SUPPORT—LOCAL AUTHORITY OBLIGED TO PROVIDE SUPPORT—HOUSING ACT, 1936 (26 Geo. 5 and 1 Edw. 8, c. 51), s. 26 (3).

A clearance order was made by the corporation and confirmed by the Minister of Health in January, 1935. The plaintiff owned a house on the boundary of the area subject to the order and outside it. He was entitled to an easement of support for his house from adjoining property ordered to be demolished. Having good reason to think that the owner thereof proposed to demolish it without providing equivalent support for his premises, the plaintiff obtained an injunction restraining him from so doing (83 SOL. J. 416). A similar action against the corporation having stood over, the plaintiff now moved for an injunction against them as they now proposed to carry out the demolition without providing the support.

SIMONDS, J., said that it was the positive duty of the corporation under the Housing Act, 1936, s. 26 (3), to enter and demolish the buildings and sell the materials. The Act did not provide for compensation for any damage done to adjoining buildings in the exercise of the corporation's statutory powers, but the question arose whether they were authorised to do that which the owner of the buildings to be demolished could not do, i.e., deprive the plaintiff of the support afforded by the condemned building without providing

equivalent support. No compensation was provided for any person whose house was demolished, but that was the penalty for owning a house which had become unfit for human habitation or dangerous to the health of the inhabitants of the area; such a consideration did not apply to one whose house was outside the area and who was not responsible for the condition of any house in it. It was not necessary to determine whether the corporation could demolish the house without providing equivalent support, whether or not there was an easement of support. But here the plaintiff had a valuable proprietary right recognised by law, an easement of support, which could only be taken away by a plain enactment: *Attorney-General* v. *Horner*, 14 Q.B.D. 245; *Public Works Commissioners* v. *Logan* [1903] A.C., at p. 363. Nothing in the Act justified the corporation in depriving him of his right. The corporation must be restrained from demolishing without providing equivalent support. [The plaintiff having died since judgment was reserved, the time for appealing was extended to six weeks after the corporation should receive notice that representation had been taken out to his estate].

COUNSEL: *Rimmer* and *A. Irvine*; *W. M. Hunt*.

SOLICITORS: *Peacock & Goddard*, for *Hunt, Dickins and Willatt*, of Nottingham; *Sharpe, Pritchard & Co.*, for *J. E. Richards*, Town Clerk, Nottingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### Gibbons *v.* Westminster Bank, Ltd.

Lawrence, J., and a Common Jury.
21st June, 1939.

MEASURE OF DAMAGES—BANKING CONTRACT—CUSTOMER'S CHEQUE DISHONOURED BY MISTAKE—CUSTOMER NOT A TRADER—WHETHER ENTITLED TO MORE THAN NOMINAL DAMAGES WITHOUT PROOF OF SPECIAL DAMAGE.

Further consideration of an action tried by Lawrence, J., with a common jury.

On the 19th July, 1938, the plaintiff drew a cheque for £8 16s. on her account with the defendant bank, and delivered it to her landlords in payment of rent. When the landlords presented the cheque for payment on the 22nd July the bank dishonoured it, notwithstanding that the plaintiff had previously paid into the bank funds more than sufficient to meet the cheque. By an error the money paid in by the plaintiff had been credited to the wrong account, and it was therefore thought that she had insufficient funds. The bank consequently admitted having committed a breach of contract in failing to honour the cheque. On the 23rd July the plaintiff went to see the branch manager of the bank, and he paid her £1 1s., which, the defendants pleaded in their defence, was tendered and accepted in full discharge of the alleged cause of action. The plaintiff having brought this action claiming damages for breach of contract, the jury found that the guinea had not been accepted by the plaintiff in full discharge of her claim, and awarded her £50 damages. It appeared during the hearing that, after the dishonour of the cheque, the landlords had written to the plaintiff asking her in future to pay her rent in cash instead of by cheque. On that verdict, no circumstances having been pleaded by the plaintiff as constituting special damage, the question was now argued whether she was entitled to damages at large for the defendants' breach of contract. It was contended for the defendants that the plaintiff was entitled to no more than nominal damages, the general rule being that a person was not entitled to damages at large for breach of contract, and that special damage must be proved if more than nominal damages were to be recovered; that the exception to that rule in the case of a wrongfully dishonoured cheque was a trader, and that the plaintiff as a private person did not come within the exception; that the authorities such as *Marzetti* v. *Williams* (1830), 1 B. & Ad. 415, and *Rolin* v. *Steward* (1854), 14 C.B. 595, showed indirectly that a private individual was not entitled to more than nominal damages for wrongful dishonour of his cheque; and that the evidence given that the landlords had requested future payments of rent to be in cash, even if it had been pleaded, did not constitute special damage within the meaning of the authorities, and could not be measured as a monetary loss. It was contended for the plaintiff that the authorities did no more than establish that, where a trader's cheque was wrongfully dishonoured, there was an irrebuttable presumption that he had suffered loss, and that they therefore did not cover the present case, the plaintiff not being a trader, so that a decision in the plaintiff's favour would not conflict with those authorities; that the plaintiff had fulfilled the obligation on her by proving that she had actually suffered loss of credit, and that the fact that she had been asked to pay in cash was before the court, although it had not been pleaded as constituting special damage; and that that fact in law constituted special damage, since *Chaplin* v. *Hicks* (105 L.T. Rep. 285; [1911] 2 K.B. 786) showed that the fact that damages were difficult to assess in money did not mean that special damage had not been proved.

LAWRENCE, J., said that, in the circumstances, he could not allow any amendment of the statement of claim. The question for decision, therefore, was whether the plaintiff was entitled to more than nominal damages in the absence of proof of actual damage. Although it had never been held affirmatively that a person not a trader was not entitled to substantial damages for wrongful dishonour of his cheque, the corollary of the proposition laid down by the authorities was the law—namely, that a person not a trader was not entitled to recover substantial damages for the wrongful dishonour of his cheque unless he pleaded and proved special damage. The present plaintiff could accordingly only recover nominal damages, and there would be judgment in her favour for 40s. On the plaintiff's undertaking not to appeal, the defendants did not ask for costs.

COUNSEL: *G. H. Oliver*, for the plaintiff; *B. B. Stenham*, for the defendants.

SOLICITORS: *H. G. Taunton*; *Alfred Bright & Sons*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Aldham *v.* United Dairies (London), Ltd.

Humphreys, J., and a Common Jury.
26th June, 1939.

NEGLIGENCE—HORSE AND CART LEFT UNATTENDED IN STREET—PEDESTRIAN BITTEN—NO KNOWLEDGE IN OWNERS OF VICIOUS PROPENSITY IN HORSE—LIABILITY.

Further consideration of an action for damages for negligence tried by Humphreys, J., with a common jury.

While the plaintiff was walking along the pavement of a street in London in May, 1938, a pony belonging to the defendant company, which, she said, had been negligently left unattended with one of their milk-carts, and was standing with its forefeet on the pavement, bit her and dragged her to the ground, causing her injury. The jury, in answer to questions left to them, found that the pony bit the plaintiff and then pulled her to the ground by taking her coat between its teeth; that the defendants had no knowledge of any propensity in the animal to attack human beings; that, in the circumstances of the case, the defendants were negligent in leaving the pony unattended; and that the plaintiff was entitled to £300 damages.

HUMPHREYS, J., referred to *Haynes* v. *Harwood*, 78 SOL. J. 801; [1935] 1 K.B. 146, and *Hendry* v. *M'Dougall* [1923] S.C. 378, at p. 382, and said that it was impossible to hold on the facts of the case that there was no evidence on which the jury could find that leaving the horse unattended was negligent. The case was not one like *Deen* v. *Davies*, 79 SOL. J.

381; [1935] 2 K.B. 282, where a pony had got loose and gone home and, while going home, had injured someone; or a case where a horse had bolted. Such a case would have been unarguable. There was a more formidable difficulty in the way of the plaintiff; the owner of a domestic animal was not responsible for the damage done by that animal unless he had knowledge of some propensity in the animal to behave in the way which caused the injury complained of. There was no such knowledge here, and if the plaintiff relied on common law negligence she must show that the injury caused to her was a reasonable and natural consequence of the known facts. His lordship referred to the judgment of Erle, C.J., in *Cox* v. *Burbidge* (1863), 13 C.B. (N.S.) 430, at p. 437, as the classic exposition of the law on that subject, and to *Bradley* v. *Wallaces, Ltd.* [1913] 3 K.B. 629, and said that he came to the conclusion on those cases that the plaintiff could not have judgment for the damages which the jury had awarded her unless she could either show that there was something vicious in the pony known to its owners, or prove negligence on their part the reasonable consequence of which was the behaviour of the horse as proved. There was no such evidence in the case and there must therefore be judgment for the defendants.

COUNSEL: *Robert Fortune; Cyril Salmon.*

SOLICITORS: *W. T. Iggulden; Blount, Petre & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Way & Waller, Ltd.** *v.* **Verrall.**

Singleton, J. 26th June, 1939.

PRINCIPAL AND AGENT—SALE OF HOUSE PROPERTY—PURCHASER INTRODUCED BY ESTATE AGENT—NO UNDUE DELAYS BY PURCHASER—CERTAINTY THAT SALE WOULD BE COMPLETED BUT FOR VENDOR'S TERMINATING NEGOTIATIONS—AGENT'S RIGHT TO COMMISSION.

Action by an agent for commission.

The plaintiff company were estate agents carrying on business in London, and the defendant was the owner of certain property at Streatham. In March, 1938, estate agents called Cory & Cory had introduced to the defendant a prospective purchaser, who was the client of Waterhouse and Co., solicitors. The contract was still not concluded by the 17th June, whereupon the defendant's solicitors terminated the negotiations, at which time the plaintiffs had introduced a prospective purchaser, who was willing to pay £6,650 for the property. On 29th June the defendant instructed his solicitors to terminate the negotiations with the second prospective purchaser, having by that date received a renewed offer of £6,650 from the original prospective purchaser. His lordship found as a fact that the defendant accepted that renewed offer, and so terminated the negotiations with the plaintiffs' client, because he feared that he was in any event under an obligation, legal or moral, to pay commission to Cory & Cory in respect of the original negotiations which he had broken off, and because he wished to avoid the liability to pay commission both to them and to the plaintiffs, which, he felt, might arise if he completed the sale to the purchaser introduced by the latter. His lordship further found as a fact that in the transaction between the defendant and the plaintiffs' prospective purchaser there was no undue delay by the latter, and that it would have been carried through in the normal course if the defendant had not terminated the negotiations. The plaintiffs now sued for the amount of the commission which would have been due to them by agreement with the defendant if the transaction with their client had been completed, or for damages for breach of the contract of agency.

SINGLETON, J., said that the defendant argued that the plaintiffs were entitled to no commission because there was no sale, and to no damages because there was no implied term which had been broken in the contract of agency; that the plaintiffs knew that the defendant had employed another agent so that a sale through that agent was an ordinary risk of the plaintiffs' employment; and that the defendant had in any case "just excuse" for acting as he did, that expression being taken from *Trollope & Sons* v. *Martyn Bros.* [1934] 2 K.B., at p. 436; 78 SOL. J. 568, where it was held by a majority of the Court of Appeal that there must in such a case be an implied term in the contract between vendor and agent that, if the prospective purchaser were ready and able to complete, the vendor would not, by refusing to complete without just cause, prevent the agent from earning his commission. After that case came *Trollope & Sons* v. *Caplan* [1936] 2 K.B. 382, which was distinguishable. In *Keppel* v. *Wheeler* [1927] 1 K.B. 577, at pp. 586, 587, Bankes, L.J., uttered a *dictum* on this subject which gave him (Singleton, J.) cause for hesitation, but which was *obiter*. It was followed in *Raymond* v. *Wooten*, 75 SOL. J. 645; (1931), 47 T.L.R. 606, which was disapproved in *George Trollope & Sons* v. *Martyn Bros.*, *supra*. That *dictum*, to the effect that, if other agents found someone whom the vendor preferred, or who had offered more, the vendor was entitled to accept that person as purchaser and break off existing negotiations without being liable for commission in respect of them, appeared, in the light of *George Trollope & Sons* v. *Martyn Bros.*, *supra*, to be open to question. Having regard to Greer, L.J.'s judgment in that case, it could not be a "just excuse" for terminating negotiations that the defendant had received another offer from Waterhouse & Co. His lordship referred to *French & Co.* v. *Leeston Shipping Co.* [1922] 1 A.C. 451, and *Dudley Bros. & Co.* v. *Barnet* [1937] S.C. 632, and said that, the defendant's motives in breaking off negotiations being what they were, the plaintiffs were entitled to damages equal to the amount of commission which they would have earned if the sale had gone through.

COUNSEL: *S. R. Edgedale; Maxwell Fyfe*, K.C., and *R. Etherton.*

SOLICITORS: *Seaton Taylor & Co.; Frere, Cholmeley & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# Obituary.

SIR JOHN ASTBURY.

The Right Hon. Sir John Astbury, a former Judge of the Chancery Division of the High Court of Justice, died at Sandwich, Kent, on Monday, 21st August, at the age of seventy-nine. A "Current Topic" on the late Judge appears at p. 661 of this issue.

MR. G. W. FOX.

Mr. George Washington Fox, solicitor, head of the firm of Messrs. Washington Fox & Co., of Kingston-upon-Thames, died at Kingston Hill, on Tuesday, 22nd August, at the age of seventy-six. Mr. Washington Fox was admitted a solicitor in 1886.

MR. A. E. NALDER.

Mr. Arthur Edward Nalder, senior partner in the firm of Messrs. Nalder, Littler & Addleshaw, of Shepton Mallet, Somerset, died on the 14th August, aged seventy-six. He was admitted in 1885. He had been practising in Shepton Mallet for forty-nine years, his father, Mr. Frank Isaac Nalder, having founded the practice at Croscombe, near Shepton Mallet, in 1838.

# Societies.

## The Society of Public Teachers of Law.

The thirty-first annual meeting of the Society was held at Edinburgh, on the invitation of the University of Edinburgh, on 21st and 22nd July, with the President, Dr. G. R. Y. Radcliffe in the chair. The membership of the Society was recently extended so as to embrace public teachers of law in Scotland, and the fact that this was the first time that the Society has met outside the jurisdiction of the common law added exceptional interest to this year's meeting.

Professor R. W. Lee, Rhodes Professor of Roman-Dutch Law in the University of Oxford, read a paper on "Roman Law in South Africa; Some Contacts with the Law of Scotland," in which he referred to the general resemblance between the legal systems of the two countries and commented upon the decisions of the South African courts in which Scottish cases had been cited.

Professor R. Candlish Henderson, K.C., Professor of Scots Law in the University of Edinburgh, read a paper on "Similarities and Dissimilarities of English and Scots Law." Although some of the older Scottish writers, he said, had thought it possible that English and Scots law might be fused into one system, this had never found favour in Scotland. In certain departments of the law there was such diversity between the two systems that comparison between them was profitless.

Dr. G. R. Y. Radcliffe (Principal of The Law Society) delivered his presidential address on the legal education of the articled clerk. This, he said, was a problem which was complicated by the fact that the students, unlike the Bar students, were neither educationally homogeneous nor geographically centralised. As a result of the decentralisation of the profession and the valuable goodwill attaching to a practice, the recruiting of new entrants was primarily a recruiting of persons for a particular office, not a recruiting for the profession as a whole, and apprenticeship to an individual principal was the basis of the whole system. While stressing the great value from some points of view of the practical training in the office, Dr. Radcliffe was of opinion that a proper balance had not been reached between that training and the scientific study of the law. Service under articles was still governed by provisions of the Solicitors Act, 1936, which were reproduced from the Solicitors Act, 1843, and assumed that any study of the law needed to pass the examinations could be done out of office hours. A ruling of The Law Society in fact permitted articled clerks substantial periods of absence from their offices to attend private coaches, but the benefit of this ruling had not been extended to the law schools, which were required to provide instruction at such hours and spread over such periods that they could be attended by clerks upon whose time and energy the office had simultaneous and prior claims. Meanwhile, the law had increased vastly in complexity and the experience in the office was too often highly specialised. Nor was there any co-ordination between the work in the office and the work in the school. As a result, however practical in one sense the questions set in the examinations, the greater part of them were bound to be purely theoretical for any given candidate in the sense that they concerned matters which he had not met in practice and had learned only from books. The remedy was that the students during their time of attendance at the school should be freed from attendance at the office. It would be useless to propose a radical change of this sort if the present system gave satisfactory results in the examinations, but this was far from being the case.

All the papers gave rise to interesting discussions to which a large number of members and guests contributed.

# Legal Notes and News.

## Honours and Appointments.

Mr. JOHN H. WARREN, M.A., Clerk and Solicitor to Newton-le-Willows Urban District Council, has been appointed Town Clerk of Slough in succession to Mr. F. R. Duxbury, who is retiring. Mr. Warren was admitted a solicitor in 1933.

## Professional Announcements.

**(2s. per line.)**

Messrs. ERNEST SALAMAN, WADE & Co., 62, London Wall, London, E.C.2, have decided to dissolve partnership and to transfer their business, established over eighty-four years ago, to Messrs. COBURN & Co., of 3, London Wall Buildings, London, E.C.2. This step is being taken owing to Mr. Salaman's advancing age, and Mr. Wade's accession to his father's business.

## Notes.

The tribunal appointed to consider applications for inclusion in the register of conscientious objectors from the area comprising the counties of Norfolk, Suffolk, Isle of Ely, Huntingdonshire, Cambridge, and parts of Essex, Hertfordshire, Soke of Peterborough and Bedfordshire will hold its first meeting at the Crown Court, Shire Hall, Castle Hill, Cambridge, on 14th September. The chairman of the tribunal will be Judge Campbell.

# Stock Exchange Prices of certain Trustee Securities.

**Bank Rate (24th August 1939) 4%. Next London Stock Exchange Settlement, Thursday, 7th September 1939.**

| | Div. Months. | Middle Price 23 Aug. 1939. | Flat Interest Yield. | ‡ Approximate Yield with redemption |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | | £ s. d. | £ s. d. |
| Consols 4% 1957 or after | FA | 99½ | 4 0 5 | — |
| Consols 2½% | JAJO | 63½ | 3 18 9 | — |
| War Loan 3½% 1952 or after | JD | 89 | 3 18 8 | — |
| Funding 4% Loan 1960-90 | MN | 103½ | 3 17 4 | 3 15 2 |
| Funding 3% Loan 1959-69 | AO | 89½ | 3 7 0 | 3 11 6 |
| Funding 2¾% Loan 1952-57 | JD | 89 | 3 1 10 | 3 11 10 |
| Funding 2½% Loan 1956-61 | AO | 82 | 3 1 0 | 3 14 3 |
| Victory 4% Loan Av. life 21 years | MS | 103xd | 3 17 8 | 3 15 10 |
| Conversion 5% Loan 1944-64 | MN | 106¾ | 4 13 8 | 3 3 6 |
| Conversion 3½% Loan 1961 or after | AO | 90 | 3 17 9 | — |
| Conversion 3% Loan 1948-53 | MS | 95 | 3 3 2 | 3 9 1 |
| Conversion 2½% Loan 1944-49 | AO | 95 | 2 12 8 | 3 1 10 |
| National Defence Loan 3% 1954-58 | JJ | 93 | 3 4 6 | 3 10 2 |
| Local Loans 3% Stock 1912 or after | JAJO | 75 | 4 0 0 | — |
| Bank Stock | AO | 300 | 4 0 0 | — |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after | JJ | 69 | 3 19 9 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 76½ | 3 18 5 | — |
| India 4½% 1950-55 | MN | 105½ | 4 5 4 | 3 17 6 |
| India 3½% 1931 or after | JAJO | 81½ | 4 5 11 | — |
| India 3% 1948 or after | JAJO | 68½ | 4 7 7 | — |
| Sudan 4½% 1939-73 Av. life 27 years | FA | 104½ | 4 6 1 | 4 4 4 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 101½ | 3 18 10 | 3 16 8 |
| Tanganyika 4% Guaranteed 1951-71 | FA | 101½ | 3 18 10 | 3 16 8 |
| L.P.T.B. 4½% "T.F.A." Stock 1942-72 | JJ | 102 | 4 8 3 | 3 12 8 |
| Lon. Elec. T. F. Corpn. 2½% 1950-55 | FA | 85 | 2 18 10 | 3 15 3 |
| **COLONIAL SECURITIES** | | | | |
| Australia (Commonw'th) 4% 1955-70 | JJ | 90½ | 4 8 5 | 4 11 7 |
| Australia (Commonw'th) 3% 1955-58 | AO | 74½ | 4 0 6 | 5 2 9 |
| *Canada 4% 1953-58 | MS | 104 | 3 16 11 | 3 12 6 |
| Natal 3% 1929-49 | JJ | 92½ | 3 4 10 | 4 0 5 |
| New South Wales 3½% 1930-50 | JJ | 84½ | 4 2 10 | 5 8 2 |
| New Zealand 3% 1945 | AO | 85½ | 3 10 2 | 6 4 1 |
| Nigeria 4% 1963 | AO | 102½ | 3 18 1 | 3 16 9 |
| Queensland 3½% 1950-70 | JJ | 82½ | 4 4 10 | 4 11 8 |
| South Africa 3½% 1953-73 | JD | 92½ | 3 15 8 | 3 18 1 |
| Victoria 3½% 1929-49 | AO | 89 | 3 18 8 | 4 18 4 |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after | JJ | 75 | 4 0 0 | — |
| Croydon 3% 1940-60 | AO | 87 | 3 9 0 | 3 18 6 |
| Essex County 3½% 1952-72 | JD | 96½ | 3 12 6 | 3 13 9 |
| Leeds 3% 1927 or after | JJ | 76 | 3 18 11 | — |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | JAJO | 88½ | 3 19 1 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 60½ | 4 2 8 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 73 | 4 2 2 | — |
| Manchester 3% 1941 or after | FA | 74 | 4 1 1 | — |
| Metropolitan Consd. 2½% 1920-49 | MJSD | 93½ | 2 13 6 | 3 5 5 |
| Metropolitan Water Board 3% "A" 1963-2003 | AO | 75 | 4 0 0 | 4 2 1 |
| Do. do. 3% "B" 1934-2003 | MS | 76 | 3 18 11 | 4 1 0 |
| Do. do. 3% "E" 1953-73 | JJ | 86 | 3 9 9 | 3 14 8 |
| *Middlesex County Council 4% 1952-72 | MN | 104 | 3 16 11 | 3 12 3 |
| * Do. do. 4½% 1950-70 | MN | 107 | 4 4 1 | 3 14 3 |
| Nottingham 3% Irredeemable | MN | 77 | 3 17 11 | — |
| Sheffield Corp. 3½% 1968 | JJ | 95 | 3 13 8 | 3 15 9 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS** | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 93½ | 4 5 7 | — |
| Gt. Western Rly. 4½% Debenture | JJ | 102 | 4 8 3 | — |
| Gt. Western Rly. 5% Debenture | JJ | 112½ | 4 8 11 | — |
| Gt. Western Rly. 5% Rent Charge | FA | 106 | 4 14 4 | — |
| Gt. Western Rly. 5% Cons. Guaranteed | MA | 99 | 5 1 0 | — |
| Gt. Western Rly. 5% Preference | MA | 81½ | 6 2 8 | — |
| Southern Rly. 4% Debenture | JJ | 93½ | 4 5 7 | — |
| Southern Rly. 4% Red. Deb. 1962-67 | JJ | 101½ | 3 18 10 | 3 18 0 |
| Southern Rly. 5% Guaranteed | MA | 105 | 4 15 3 | — |
| Southern Rly. 5% Preference | MA | 82 | 6 1 11 | — |

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.